

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

KEWANEE OIL COMPANY

Claim No. CU-1509

Decision No. CU 1793

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by "The Harshaw Chemical Company, Division of KEWANEE OIL COMPANY" in the amount of \$5,877.33 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on

property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of KEWANEE OIL CORPORATION has certified that the Harshaw Chemical Company was incorporated in the State of Ohio in 1897, that the KEWANEE OIL COMPANY was incorporated in the State of Delaware in 1937, and that the Kentucky Color and Chemical Company was incorporated in the State of Kentucky in 1919. The record shows that on October 1, 1958, the Harshaw Chemical Company acquired 100% of the capital stock of Kentucky Color and Chemical Company, and that the Kentucky company was subsequently merged into the Harshaw Chemical Company. Further, on December 9, 1966, the Harshaw Chemical Company was acquired by, and merged into the KEWANEE OIL COMPANY which is substituted as the proper party claimant. Claimant has certified that more than 50% of the outstanding capital stock of each of the three corporations was owned by United States nationals upon the pertinent dates.

An officer of the KEWANEE OIL COMPANY has certified that 99.8% of the Company's outstanding capital stock was owned by United States nationals.

The record contains copies of letters to claimant or its predecessors in interest from various banks, each letter reflecting the payment or non-payment of a debt owed by a Cuban enterprise for chemical products shipped by claimant's predecessor in interest. Payment in

each transaction was to be made by a bank draft drawn upon the Cuban debtor for the purchase price of the goods.

<u>DRAWER</u>	<u>DRAWEE</u>	<u>DATE OF COLLECTION ADVICE</u>	<u>AMOUNT OF DRAFT</u>
Kentucky Color & Chemical Harshaw Chemical Company	Fabrica Nacional de Pinturas	March 31, 1960	\$ 840.00
" "	" " " "	September 30, 1960	1,242.00
" "	" " " "	October 17, 1960	1,350.00
" "	" " " "	October 16, 1961	106.25
" "	" " " "	August 30, 1961	648.00
			<u>\$4,186.25</u>

In addition, the record contains a copy of a letter to Harshaw Chemical Company dated March 11, 1959, from its bank, the Union Commerce Bank of Cleveland, which states that drafts drawn on Ceramicas Kli-Per, S.A., for \$1,049.68 and \$277.94 would be paid by the drawee in the near future. There is also a letter addressed to Harshaw Chemical Company from the Banco Continental Cubano, dated September 27, 1960, concerning its draft on Ceramicas Kli-Per, S.A., for \$363.46. Claimant states that it has never received any of the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on September 29, 1959, the date of the publication of Law 568 as to \$1,327.62 (\$1,049.68 and \$277.94),

On April 1, 1960	as to \$ 840.00
On October 1, 1960	as to \$1,242.00
On October 18, 1960	as to \$1,350.00
On October 2, 1960	as to \$ 363.46
On August 31, 1961	as to \$ . 648.00

and on October 17, 1961 as to \$106.25, in each case either the day after the date of the collection advice or, in the case of the item of \$363.46, 30 days after the due date.

The Commission has decided that in allowance of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the aforesaid dates on which the losses occurred, to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that KEWANEE OIL COMPANY succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Thousand Eight Hundred Seventy-Seven Dollars and Thirty-Three Cents (\$5,877.33) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

MAY 1 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)